IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.53 OF 1993

Sushila Shantilal Jhaveri)
residing at 7-8 Pran Niwas)
M.A. Road, Andheri (West),)
Bombay.)..Petitioner.

V/s.

1. Union of India through the)
Secretary, Ministry of)
Finance, Government of India)
North Block, Central)
Secretariat, New Delhi.)
)
)
2. H.C.Parekh, Commissioner of)
Income-tax, City VII, Bombay)
having his office at Matru)
Mandir, Tardeo Road,)
Mumbai - 400 007.)..Respondents.

Mr.B.V.Javeri for petitioner.

None for respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 10TH JULY, 2006.

ORAL JUDGMENT (PER V.C.DAGA, J.)

Heard the learned counsel for the petitioner.

None for the respondents in spite of service.

THE FACTS

2. This petition is directed against the under section 237A of the Income Tax Act, 1961 (‘the Act’ for short) dated 15/10/1992 passed by the C.I.T. City VII, Mumbai whereby the application under section 273A came to be rejected on the following considerations:

> " In this case the assessee could not get any relief in respect of additions of Rs.3,54,915/- except those of Rs.47,200/- added in the name of Shri S.G.Jhaveri and S.C.Jhaveri, HUF. She could not prove that the jewellery seized belongs to various people as claimed by her. In appeal before the CIT(A) she has not agitated many of the Additions against which the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the I.T.Act, 1961. Therefore, the disclosure could not be said to be full and true. Assessee’s case is not covered by section 273A of the Income-tax Act, 1961. "

3. The dissection of the aforesaid operative part

of the order would show that the Commissioner denied relief to the petitioner under section 273A of the Act on the following three grounds:-

(i) that the assessee could not get any relief in respect of additions of Rs.3,54,915/- except those of Rs.47,200/- added in the name of Mr.S.G.Jhaveri and Mr. S.C.Jhaveri, HUF.

(ii) that the petitioner could not prove that the jewelleries used belonged to the various persons.

(iii) that failure to prove above, resulted in initiating penalty proceedings under section 271 (1)(c) of the Act.

4. The cumulative effect of the the aforesaid findings led to the conclusion that there was no full and true disclosure by the assessee as required under section 273A of the Act and, therefore, the assessee / petitioner was held not entitled to any concession under section 273A of the Act.

5. At this stage, it would be relevant to note that this petition was filed in this Court in the year 1993; whereas the same is being heard after 13 years. During this intervening period some of the events, which have taken place have significantly affected the validity of the impugned order. They are:

(a) the petitioner has proved that the jewellery worth Rs.37,262/- belonged to one Mrs.Panna S.Jhaveri and that the jewellery worth Rs.1,36,044/- belonged to one Mrs.Renuka G.Jhaveri, Master Harsh and Master Kunal Shroff. [This was proved by the petitioner in addition to the proof of jewelleries belonging to Mr.S.G.Jhaveri and Mr.S.C.Jhaveri worth Rs.47,200/- as recorded in the impugned order].

(b) the appeal filed by the assessee / petitioner bearing ITA No.2501/Bom/92 came to be decided by the Income Tax Appellate Tribunal, Mumbai Bench C, vide its order dated 17/5/2006, wherein the penalty imposed under section 271(1) (c) came to be set aside for the reasons recorded therein.

SUBMISSIONS

6. Mr.Jhaveri, learned counsel for the petitioner

submits that in view of the subsequent events, the case of the petitioner would be squarely covered by the ratio of the Judgment of this Court in the case of **Mrs.Usha A.Kalwani V/s. S.N.Soni & Anr.** reported in **2005 (272) I.T.R. 67**.

7. In his submission, factual matrix sketched hereinabove demonstrates that the petitioner during pendency of this petition could prove that the findings on the basis of which the petitioner was denied relief of section 273A of the Act, do not survive as on date. That the impact of the subsequent events is such that the impugned order completely stands obliterated and has displaced the adverse findings suffered by the petitioner. He placed reliance on the case of **Gayaprasad V/s. Pradeep Shrivastav [A.I.R.2001 SCW 598]** in support of his submission.

CONSIDERATION

8. Having heard Mr.Jhaveri, learned counsel for the petitioner; having seen the impact of the subsequent events on the operative part of the impugned order, the submission made by Mr.Jhaveri needs acceptance. The Apex Court in the case of Gaya Prasad

(cited supra) ruled that subsequent events or developments occurred pendete lite can be considered; if it has a effect of over shadowing original case found by the Court below. In the case of **Hasmat Rai V/s. Raghunath Prasad [A.I.R. 1981 S.C. 1711]**; the Apex Court held that the magnitude of subsequent event or dimension thereof should be such that it should have the effect of completely changing the colour of the original findings. In our considered view, subsequent events brought on record have completely changed the colour of the original findings extracted in para 2 supra.. In the peculiar facts and circumstances of this case, we feel that it would be necessary to direct the Commissioner of income Tax to reconsider the application filed and submissions made by the petitioner on its own merits in the light of the subsequent events since they have dislodged the validity of the adverse findings suffered by the petitioner.

9. In the above view of the matter, the impugned order dated 15/10/1992 is set aside. The application under section 273A of the Act is restored to the file of Commissioner of Income Tax, City VII, Mumbai. The proceedings are remitted back to him for consideration afresh following the principles of natural justice

keeping all rival contentions open.

10. The Commissioner of Income Tax having jurisdiction to deal with the matter is directed to decide the application as expeditiously as possible, in any event within 6 months from the date of receipt of the copy of this order.

11. In the result, petition is allowed. Rule is made absolute in terms of above order with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)